COURT OF APPEALS
DECISION
DATED AND FILED

August 28, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2573 **Cir. Ct. No. 1994CF940379**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MILTON LEE REED,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed*.

Before Curley, P.J., Wedemeyer and Kessler, JJ.

¶1 PER CURIAM. Milton Lee Reed appeals from a postconviction order denying his motion to inspect and copy his presentence investigation report ("report"). The issue is whether Reed is entitled to inspect and copy his report

twelve years after sentence was imposed to prepare a successive postconviction motion without specifying why he needs the report. We conclude that Reed was not entitled to his report after the expiration of his direct appeal rights and after he had filed a postconviction motion, particularly when he has failed to allege with specificity why he needs the report, which was read to him prior to sentencing. Therefore, we affirm.

¶2 In 1994, Reed pled guilty to felony murder. The trial court imposed a forty-year indeterminate sentence. At the sentencing hearing, the trial court inquired of Reed's counsel whether he and Reed had read the report. Trial counsel responded that he had "reviewed and gone through the presentence report" with Reed and that "[t]here are no additions or corrections." Reed did not appeal. In 1996, Reed filed a petition for a writ of habeas corpus alleging the ineffectiveness of counsel. We denied Reed's petition. In 1999, Reed moved for postconviction relief pursuant to WIS. STAT. § 974.06 (1999-2000). We affirmed the trial court's denial of Reed's postconviction motion.

¶3 In 2006, Reed filed a postconviction motion seeking to copy his report pursuant to WIS. STAT. § 972.15(4) (amended Aug. 1, 2006). The trial court denied the motion because Reed had an opportunity to review the report before sentencing, adding that since "defendant's appellate rights have been exhausted" there was certainly no reason to "order its release for further examination." Reed appeals.

¶4 We presume that Reed is claiming entitlement to his report pursuant to WIS. STAT. § 972.15(4m), which became effective five months prior to Reed's

motion.[1] Pursuant to § 972.15(4m), Reed may arguably be entitled to "inspect" his report, but is not entitled to "copy" it because it authorizes "the defendant's attorney … to have and keep a copy" of the report, and allows an unrepresented defendant "to view the presentence investigation report but … not [to] keep a copy of the report." WIS. STAT. § 972.15(4m).

¶5 At sentencing, Reed was represented by counsel. The record indicates that trial counsel reviewed the report with Reed before sentencing. Reed's petition alleging the ineffective assistance of counsel for failing to pursue a direct appeal was denied, thus, it is unlikely that WIS. STAT. § 972.15(4m) applies to him. If he claims that it does insofar as he is now unrepresented, at most he is statutorily entitled to view (or inspect) the report; he is not entitled to keep (or copy) it. *See* ***id.*** In fact, "[a] defendant who views the contents of a presentence investigation report shall keep the information in the report confidential." ***Id.***[2]

¶6 Reed does not explain why he did not previously seek access to his report, either at sentencing, or in his 1999 postconviction motion. His failure to allege a "sufficient reason" for not raising this issue previously procedurally bars this postconviction motion. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994) (A postconviction movant must raise all grounds for postconviction relief on direct appeal (or in his or her original, supplemental or

[1] WISCONSIN STAT. § 972.15(4m) was enacted April 10, 2006 and took effect April 21, 2006.

[2] The Wisconsin Supreme Court recently decided a variation of this issue in ***State v. Parent***, 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915. In that case, however, the defendant sought his report to respond to a no-merit appeal pursuant to WIS. STAT. RULE 809.32 (2003-04). Reed did not pursue a direct appeal, nor did he raise this issue in the twelve years between entry of his judgment of conviction and the filing of his current postconviction motion, despite his having filed a postconviction motion in 1999.

amended postconviction motion) unless, in a subsequent postconviction motion, he or she alleges a sufficient reason for failing to previously raise those issues.). Moreover, in his motion he alleges his reason for seeking his report is "for the research and the filing of a 'Postconviction Motion,' pursuant to Wis. Stats. § 974.06, or a 'Sentence Modification' [Motion]." In his appellate brief, he admits he needs this information as "a means to ascertain whether there was any misinformation, in the PSI. Until Reed reads his PSI, its correctness is unknow[n] to anyone. If the PSI contain[]s errors …" Notwithstanding the procedural hurdle of ***Escalona*** and § 974.06(4), Reed admits he is on a fishing expedition; he does not know, or even suspect that his report contains any misinformation.[3]

¶7 As we explained in ***State v. DeMars***, 171 Wis. 2d 666, 676, 492 N.W.2d 642 (Ct. App. 1992):

> Aside from raising this complaint [in this] appeal, there is no indication anywhere that DeMars did not see his PSI. He did not raise the matter at sentencing or object to going ahead with sentencing. If defense counsel believes the facts here raise a [***State v.***] ***Skaff***[, 152 Wis. 2d 48, 447 N.W.2d 84 (Ct. App. 1989)] issue, the proper time to assert it would have been at the sentencing hearing. When a defendant, or defense counsel, believes an order unconstitutionally restricts the defendant's access to the PSI, we hold that the challenger has a duty to raise that claim in a timely fashion. One cannot proceed quietly with sentencing and then, on appeal, assert for the first time a ***Skaff***-type violation and claim entitlement to resentencing.

Id. Reed has not shown why his motion should not be barred on its merits by ***DeMars***.

[3] Moreover, the report was read to him by his trial counsel, and he did not object to counsel's confirmation to the trial court before it imposed sentence that "[t]here [we]re no additions or corrections" to the report.

¶8 The trial court summarily denied the motion because Reed had reviewed the report with trial counsel before the imposition of sentence. The trial court additionally reasoned that since Reed's deadline for pursuing a direct appeal had expired, it declined to allow him to "further examin[e]" the report. Denial is also warranted pursuant to ***DeMars***.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.